

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Examiner : Robert M. Fetsuga
Art Unit : 3751
Applicants : William D. Scott
Serial No. : 10/694,073
Filing Date : October 27, 2003
For : HOT TUB COVER
Attorney Docket : 030487.084216

Mail Stop Appeal Brief - Patents
Commissioner for Patents
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REPLY BRIEF

The Appellant files this Reply Brief to respond to three assertions in the Examiner's Answer.

I. Christopher Is Indeed Typical of the Prior Art Noted in the Background of the Invention of the Originally Filed Application, and Accordingly Suffers the Noted Problems

The Examiner asserts that Christopher is not typical of the prior art identified in the Background of the Invention of the originally filed application. As explained in the Appeal Brief, the Christopher cover is problematic because its expanded polystyrene (EPS) core can absorb water over time, weakening the foam and causing the cover to sag. In response, the Examiner states that "Christopher teaches a 'completely moisture-proof spa cover' (col. 1 ln. 61) that would preclude soaking in of water and subsequent weakening."

A full review of Christopher clarifies that the quoted language is referring to the vinyl jacket and not to the core. See for example column 1, lines 44-46, stating that "previous

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designs of a spa cover *encasement*...are unsatisfactory,” and column 1, lines 63-65, stating that Christopher discloses “a unitary spa cover *encasement* top with fewer seams...eliminating moisture penetration into the spa cover.” [Emphasis added.] While the goal of Christopher’s vinyl jacket is to be water impervious, the reality is otherwise. Specifically, the reality is that vinyl jackets come unstitched, tear, rip, and/or crack with age and use. When the integrity of the jacket is compromised, water soaks into the core. Because Christopher includes an EPS core, it will suffer the problems noted in the originally filed application and in the Appeal Brief.

The Appellant also notes that Christopher teaches away from the present invention. Prior artisans have attempted to address the waterlogging problem by enhancing the water tightness of the vinyl jacket. On the other hand, the Appellant acknowledged that perfect water tightness of the vinyl jacket is impossible (at least within an acceptable price range for hot tub covers), and the Appellant recognized that the core itself needed to be different.

II. There is No Motivation for Combining the Applied References Other Than An Impermissible Attempted Hindsight Reconstruction

The Examiner asserts that the “teaching, suggestion, or incentive” required for combining the Christopher and Kawamura references is established in that “Christopher indicates the need for a spa cover having an insulative, strong core” and that “Kawamura teaches how to make an insulative and strong plastic core.” As noted above, however, Christopher is focused only on improving the vinyl jacket. Christopher completely fails to recognize the problems that arise from a waterlogged polystyrene core, and therefore Christopher contains no

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suggestion for a different core -- let alone the core of the present invention.

Also, it is again noted that Kawamura is not related to hot tub covers, and provides no suggestion of being used in a hot tub cover.

Nothing, other than impermissible hindsight, provides motivation or suggestion for the suggested combination of Christopher and Kawamura in an attempt to reproduce the present invention.

III. Edgar is Irrelevant to this Appeal

Edgar is applied only in the rejection of dependent claims 4 and 8. As acknowledged in the Appeal Brief, these dependent claim rise or fall with their respective independent claims. Edgar therefore is irrelevant to the present appeal. Further, even if Edgar were cited in the rejections of the independent claims (rather than only the dependent claims), Edgar does not in any way supplement the noted inadequacies of Christopher and Kawamura.

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IV. Conclusion

For the reasons set forth in the Appeal Brief and in this Reply Brief, the Examiner's rejection should be reversed.

Respectfully submitted,

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